BRIEF IN SUPPORT OF PETITION.

The facts and the proceedings have been set out in the petition and will not be repeated herein.

The Powder Company admits at the outset that it attempted by means of its letters to "influence" its employees. It did this without making any threat and it does not believe that the language used contained any threat, expressed or implied. Indeed the Court of Appeals stated in its opinion at page 339:

> "* * *. They are carefully worded; certainly there is no threat explicit in the language used. * * *"

But then the Court attempted to sustain the Board's contention by stating, page 339:

> "* * *. The last letter, which called for the no strike statement, is certainly capable of being understood to suggest that unless such statement were forthcoming from the employee group there would be no new work at the plant, even though the words are chosen with a fine sense of Victorian delicacy."

The later statement is made by the Circuit Court even though there was no testimony to substantiate the interpretation placed upon the letter by the Board and the Circuit Court. Admittedly all the letters were sent in an attempt to "influence" the employees but such action is not an unfair labor practice. *Midland Steel Products Co.* v. *N. L. R. B.*, 1940, 113 F. 2d 800, 803; *Texas & New Orleans Rd. Co.* v. *Brotherhood of Railway & Steamship Clerks*, 1930, 281 U. S. 548, 568.

As the Court said in *Midland Steel Products Co.* v. *N. L. R. B.*, at page 803:

> "* * *. That a letter more strongly phrased than this one might 'influence' some employee in favor of individual conferences is possible; but such influence in and of itself does not violate the applicable section of the statute, which only prohibits interference, restraint or coercion. Not every kind of influence amounts to compulsion. * * * "

The Congressional History of the National Labor Relations Act shows that although the word "influence" was contained in the original Act submitted by Senator Wagner (Senate Bill No. S. 2926, March 1934, Section 5), that word was deleted after Congressional consideration. When the Act was passed in 1935 the word "influence" was not contained in it as an unfair labor practice.

In the second from the last paragraph of its opinion (p. 339) the Circuit Court of Appeals states that it is precluded by the statute from making an independent determination of the facts. In this statement the Circuit Court erred. The statute precludes the Court from making an independent determination of the facts when the facts are "supported by evidence, * * *." This Court has determined that this language means "substantial evidence", and has defined substantial evidence. *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 229, 230; *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 293, 299, 300. The holding of the Circuit Court of Appeals, in view of its statement that "The evidence is capable of a conclusion either in favor of the respondent or against it.", is in conflict with the law as stated in the *Consolidated Edison Co.* and *Columbian Enameling* cases.

Indeed the statement in the present case is contrary to a statement of the same court in *Quaker State Oil Refining Corporation* v. *N. L. R. B.*, 119 F. 2d 631, 632, at which place the Court stated:

> "* * * Certain it is, however, that we must analyze the evidence and determine its weight to the extent which may be necessary to decide whether it is evidence which 'a reasonable mind might accept as adequate to support a conclusion', (1) and which affords 'a substantial basis of fact from which the fact in issue can be reasonably inferred,' (2) and not merely evidence which creates a suspicion or gives equal support to inconsistent inferences."

As a result of the order of the Circuit Court the Powder Company has been ordered to cease and desist from interfering with, restraining or coercing its employees in the exercise of their right of self-organization as guaranteed by Section 7 of the Act. In truth the Powder Company made "innocuous" statements to its employees and under the decree of the Circuit Court of Appeals it is restrained therefrom. Therefore the effect of this order is to prevent the Company from communicating with its employees by letter or other means.

This follows logically because the Circuit Court on page 338 of the reported opinion found that the language used was "innocuous" and that standing by itself it "could hardly receive anything but an innocent interpretation." However, because of an alleged background, a meaning entirely outside of the language of the letters was attached to them. If the background of 1936 can be used as the basis of making an interpretation of language used in 1941, such background can thereafter be used on any occasion that the Powder Company communicates with its employees, whether orally or in writing, regardless of the language used, because innocent and non-coercive words magically become coercive when considered by the National Labor Relations Board in the light of a 1936 background. Under the decree of the Circuit Court of Appeals the

Powder Company hereafter making an innocuous statement to its employees would be in contempt of the Court's decree because the so-called "background" can not be dis-associated. Therefore, under the decree of the Circuit Court of Appeals, the only safe course for Powder Company is not to communicate with its employees at any time concerning any matters involving the employees' employment. In other words, Powder Company is being restrained from properly communicating with its employees or expressing to them any views whatsoever. Such a holding is in violation of the Petitioner's right of Free Speech as guaranteed by the First Amendment of the Constitution, for which right, now known as one of the "Four Freedoms", the youth of this country is shedding its blood. *Thornhill* v. *Alabama*, 1939, 310 U. S. 88, 95, 96; *Schneider* v. *State* (*Town of Irvington*), 1939, 308 U. S. 147, 161; *N. L. R. B.* v. *Ford Motor Co.*, 1940, 114 F. 2d 905, 914, 915; *Midland Steel Products Co.* v. *N. L. R. B., supra.* In *Schneider* v. *State, supra,* at page 161, this Court said:

> "In every case, therefore, where legislative abridgement of the rights [freedom of speech and of the press] is asserted, the courts should be astute to examine the effect of the challenged legislation."

In *Continental Box Co.* v. *N. L. R. B.*, 113 F. 2d 93, the Court said at page 97:

> "* * *. The constitutional right of free speech (Const. amend. 1) in regard to labor matters is just as clearly a right of employers as of employees, and if the Act purported to take away this right, it could not stand." Cases cited.

Nor can it be said that the Petitioner has the right of Free Speech if it is subject to being in contempt of Court

on every occasion on which it seeks to communicate with its employees. In *N. L. R. B.* v. *Falk Corp.*, 1939, 102 F. 2d 383, (reversed on other grounds, 308 U. S. 453) the Court of Appeals said at page 389:

> "On the other hand, the position of the employer is a most delicate one. Surely he has the right to his views. And the right to entertain views is rather valueless if it be not accompanied by the right to express them."

We respectfully submit, therefore, that for the reasons stated in the petition and in this brief, this Court should grant a writ of certiorari and review the highly important questions that are here involved.

Respectfully submitted,

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